

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60879

FILE: B-185456

DATE: May 13, 1976

98943

MATTER OF: Minnesota Mining and Manufacturing Company

DIGEST:

1. Where an invitation permits multiple awards and does not prohibit "all or none" bids, an "all or none" bid lower in aggregate than any combination of individual bids may be accepted even though partial award could be made at lower unit cost.
2. There is no prohibition against only acceptable bidder voluntarily decreasing amount of its bid.
3. Under 4 C.F.R. § 20.2(b)(1), requiring protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening to be filed prior thereto, protest filed after bid opening which questions alleged restrictiveness of specifications is dismissed as untimely. However, recommendation is made to procuring activity that in future solicitations permitting "all or none" bids not include sole-source items which should be subject of separate negotiated procurement.

Minnesota Mining and Manufacturing Company (3M) protests the award of a contract to Velcro Corporation under invitation for bids (IFB) DSA100-76-B-0316, issued by the Defense Personnel Support Center on October 2, 1975.

The subject IFB, for various types of tape fasteners, had an opening date of October 22, 1975. Bids were received from Velcro and 3M. The record discloses that Velcro's bid was conditioned on an "all or none" basis for the entire quantity solicited, whereas 3M did not submit a bid on four of the items. The procuring activity determined that it needed all the items and since the bid from Velcro was the only one which could be accepted that would also satisfy the requirements of the Government, an award was made to Velcro for the total contract quantity on November 19, 1975.

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3M filed its protest with our Office on December 2, 1975, stating that 3M was the low bidder on 15 of the 19 items and that the award to Velcro was, for various reasons, arbitrary, capricious, discriminating, and not in the best interest of the Government. Basically, 3M states that it was impossible for its firm to bid on all items since item 19 stipulated a proprietary item using Velcro's part number SA-0145A without any "or equal" having been allowed.

Since the IFB did not preclude bids on an "all or none" basis and bidders were advised that award would be made to the firm submitting the most advantageous bid, 3M was on notice that award might be made to a firm submitting an "all or none" bid. Where, as here, an invitation permits multiple awards and does not prohibit "all or none" bids, an "all or none" bid lower in the aggregate than any combination of individual bids available may be accepted even though a partial award could be made at a lower unit cost. See General Fire Extinguisher Corporation, B-181796, November 21, 1974, 74-2 CPD 278.

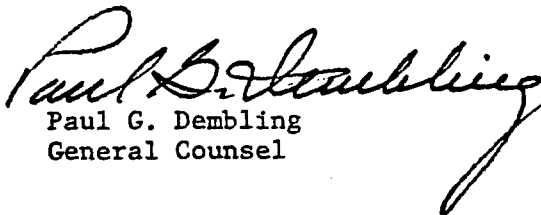
3M has also alleged that Velcro was permitted to reduce its bid price after bid opening by increasing its discount contrary to the prohibition against a bidder being allowed "two bites at the apple." While the record is not clear on this point, even if true, there is no prohibition against the only acceptable bidder voluntarily decreasing the amount of its bid. F&H Manufacturing Corporation, B-184172, May 4, 1976.

Finally, our Bid Protest Procedures, 4 C.F.R. § 20.2 (1975), state that:

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

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The alleged deficiency concerning one of the items being proprietary to Velcro was apparent prior to bid opening and, therefore, any protest was required to be filed prior thereto. Since the record discloses that 3M's protest was not filed with our Office until December 1975, more than a month after bid opening, this aspect of the protest is dismissed as untimely. See Antenna Products Division, DHV, Inc., B-184879, February 11, 1976, 76-1 CPD 89; Chu Associates, Incorporated, B-183347, July 3, 1975, 75-2 CPD 11. However, by letter of today to the Director, Defense Supply Agency, we are recommending that in the future solicitations permitting "all or none" bids not include sole-source items, but rather they should be procured under separate negotiated contracts since competition could better be achieved by negotiating contracts for the sole-source items and soliciting competitively for the other items.


Paul G. Dembling
General Counsel